

Court of Appeals, State of Michigan

ORDER

Kellie Marie Garcia v Henry Ford Wyandotte Hospital

Docket No. 286452

LC No. 07-719313-NO

Michael J. Talbot
Presiding Judge

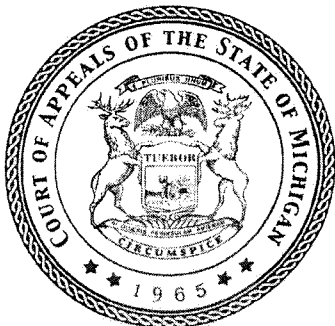
Brian K. Zahra

Kirsten Frank Kelly
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's June 17, 2008 order denying defendant's motion for summary disposition is REVERSED. A premises owner has no duty to protect an invitee from open and obvious dangers. See generally, *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). In this case, an average user of ordinary intelligence would have been able to discover the danger presented by the manhole cover upon a casual inspection. Therefore, the condition was open and obvious. See generally, *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002). Further, there were no special aspects of the condition that should prevail in imposing liability upon defendant despite the open and obvious nature of the condition. Plaintiff could have avoided stepping on the manhole cover, and the danger presented by the manhole cover did not create an unreasonably high risk of severe harm. See *Lugo, supra* at 517-519; *Joyce, supra* at 240-243. In addition, defendant is only liable to plaintiff for injury resulting from an unsafe condition either caused by defendant's own active negligence, or if otherwise caused, where known by defendant or if the condition was of such a character or had existed a sufficient length of time that defendant should have had knowledge of the condition. See generally, *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). In this case, there was no evidence that defendant caused, or knew of, the condition, and plaintiff's assertion that defendant should have known of the condition is based on mere speculation. See generally, *Libralter Plastics Inc v Chubb Group of Insurance Companies*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

The motion for stay is DISMISSED.

This case is REMANDED to the trial court for entry of summary disposition in favor of defendant. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 18 2008

Date

Sandra Schultz Mengel
Chief Clerk